(1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (CHHATTISGARH)

WRIT APPEAL NO. 29 /2006/7

PETITIONER:- Sheshmal Surana aged 67 years s/o Late Narsinghmal surana resident of village Gumra ,P.S.Gidam,distt. Dantewara Bastar(C.G.)

VERSUS

RESPONDENTS:- 1. The state of Chhattisgarh through the secretary,forest department,Raipur

2.The competent authority/Subdivisional officer,Gidam District Dantewara bastar (C.G.)

3. The conservator of forest,Jagdalpur circle,Jagdalpur Bastar (C.G.)

WRIT APPEAL UNDER ARTICLE OF THE CONSTITUTION OF INDIA AGAINST THE ORDER DATED 23.3.3.2006 PASSED BY THE HON'BLE CHIEF JUSTICE OF HIGH COURT OF CHHATTISGARH AT BILASPUR IN WRIT PETITION NO.1391.

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HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench

Coram : **Hon'ble Shri H.L. Dattu, CJ &**
Hon'ble Shri V.K. Shrivastava, J

WRIT APPEAL NO. 28 OF 2007

APPELLANT Sheshmal Surana

Versus

RESPONDENTS The State of Chhattisgarh and others.

Present :

Shri Anand Kumar Tiwari, counsel for the appellant.

Shri N.K. Agrawal, Dy. Advocate General for the State/ respondents.

ORAL ORDER

(Passed on 23rd February, 2007)

The following oral order of the Court was passed by **H.L. Dattu, C.J.**

Appellant before us is the owner of the Tractor and Trailor No.CG-05-9312. The forest authorities had seized the vehicle on the ground that the vehicle was used in contravention of the provisions of the Indian Forest Act, 1927 ("the Act" for short). The competent authority/Sub Divisional Officer (Forest), after hearing the appellant had passed a confiscation order in exercise of his power under Section 52 (3) of the Act.

2) Aggrieved by the said order, petitioner had unsuccessfully filed the first appeal and also the revision petition before the Conservator of Forest and the District & Sessions Judge.

3) It is those orders, which were subject matter of writ petition before this Court in W.P.No.1391/2006. The learned single Judge of this Court after analyzing the provisions of Section 52(5) of the Act, had rejected the writ petition and thereby had confirmed the order passed by the authorities under the Act, as well as the order passed by the revisional authority namely District & Sessions Judge. It is the correctness or otherwise of the order passed by the learned Single Judge is the subject matter of this appeal.

4) Learned counsel appearing for the appellant would contend that the appellant did not have the knowledge of the vehicle being used by his driver for committing the offence under the provisions of the Act and, therefore, the orders passed by the authorities under the Act as well as by the learned District & Sessions Judge require to be interfered with.

5) Learned Deputy Advocate General appearing for the respondents ably justifies the orders passed by the authorities.

6) In order to answer the contention canvassed by the learned counsel for the appellant, the provisions of Section 52(5) of the Act requires to be noted, which reads as under :

> "(5) No order of confiscation under sub-section (3) of any tools, vehicles, boats, ropes, chains or any other article (other than timber or forest-produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorized officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of forest-offence."

Section 52 of the Act finds place in Chapter IX of the Act. Section 52 of the Act speaks of seizure of property liable to confiscation and procedure thereof.

7) A reading of Section 52(5) of the Act suggests that the competent authority shall not pass an order of confiscation under sub-section (3) of Section 52 of the Act, if he is satisfied that the vehicle was used without the knowledge of the owner of the vehicle and further had taken all reasonable and necessary precautions against the use of the vehicle for commission of the forest offence. Both the conditions require to be satisfied by the owner of the vehicle before the competent authority in order to take benefit under this sub-section.

8) In the present case, no doubt, the owner of the vehicle had proved that he did not have the knowledge about the vehicle being used by his driver for the purpose other than it was meant for. But the finding of the authorities under the Act is, that the owner had not taken reasonable and necessary precaution against the use of the vehicle for commission of forest offence.

9) As we have already noticed both the aforesaid conditions require to be asserted and proved by the owner of the vehicle before the Forest Officer. In the present case the owner of the vehicle could prove, only, that he did not have the knowledge of the vehicle being used for the purpose other than of it was meant for. But he failed to prove before the authorities that he had taken all reasonable and necessary precautions against the use of the vehicle for commission of forest offence.

10) Keeping all these aspects, the authorities have rejected the appeal filed by the petitioner and the learned Single Judge has

confirmed the said order. Having gone through the order passed by the learned Single Judge carefully, we are of the opinion that there is no error committed by learned Single Judge, which may call for interference, and therefore, the appeal requires to be rejected and accordingly it is rejected.

11) Ordered accordingly.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge